

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring mining claim null and void. UMC 347066.

Affirmed.

1. Acquired Lands—Mining Claims: Lands Subject to

Land acquired by the United States subject to a reservation of minerals was unavailable for location of a mining claim.

APPEARANCES: Robert D. Davis, Bountiful, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Robert D. Davis appeals from a November 6, 1991, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the McDee Mining Claim, UMC 347066, null and void because it is situated on land not open to mineral entry.

The mining claim was located September 27, 1991, in the NE $\frac{1}{4}$ , sec. 27, T. 3 N., R. 1 E., Salt Lake Meridian, Davis County, Utah; a copy of the location notice was filed with BLM on October 11, 1991. BLM found the located land was conveyed without mineral reservation by a Railroad Grant on February 24, 1897. The master title plat for township 3 N. shows that, on October 15, 1991, sec. 27 was subject to Railroad Grant 29 and no other conditions. Davis contends the land in question is Federal land since it was part of approximately 10,400 acres conveyed to the United States by warranty deed dated June 13, 1936. He argues that the decision appealed from is in error since BLM's records did not include this information when the November 1991 decision issued. Davis states he has informed BLM of this fact, and provides a copy of the 1936 deed in support of his appeal.

Documents submitted by Davis on appeal show that sec. 27, T. 3 N., R. 1 E., Salt Lake Meridian, was conveyed to the United States by Farmington Land and Stock Company under Warranty Deed No. 63287, dated June 13, 1936. The deed does not give the authority or purpose for this acquisition, and states no reservations. Documents submitted by Davis to BLM on November 18, 1991, however, show that when the Union Pacific Railroad Company conveyed the land including sec. 27 to Farmington Land and Stock Company by Deed No. 398, it reserved "all coal and other minerals

within or underlying said lands," along with the right to prospect for, mine, and remove coal or other minerals.

[1] Under the Mining Law of 1872, 30 U.S.C. § 22 (1988), a person has a statutory right to enter open, unappropriated, and unreserved public lands to conduct mineral prospecting, exploration, development, and extraction. See 43 CFR 3802.0-6. But land patented out of Federal ownership that is again acquired by the United States is properly distinguished from public domain or public land and is not subject to the public land laws. Bobby Lee Moore, 72 I.D. 505, 510 (1965), aff'd sub nom. Lewis v. General Services Administration, 377 F.2d 499 (9th Cir. 1967). Consequently, the land at issue did not become subject to the operation of the mining laws upon reconveyance. An order opening the land to such location was needed before sec. 27 could become subject to mineral entry. See Maurice Duval, 68 IBLA 1, 2 (1982). Since Davis has not shown that such an order issued, the land at issue did not comprise "open public land" when the McDee claim was located. Land conveyed to the United States subject to a reservation of mineral rights is not available for location of mining claims and claims located thereon are properly held to be null and void ab initio. August F. Plachta, 88 IBLA 304, 306 (1985). Davis has not shown that the mineral estate in sec. 27 was reconveyed to the United States. The record before us shows the United States does not claim ownership of the mineral estate and therefore the land in question is not open to mineral entry. Id.

The land in sec. 27 is neither open nor unappropriated so as to be available for mineral entry. The record establishes that it was not available for such entry when the McDee claim was located. The suggestion that the validity of the claim should be reconsidered because the record was incomplete at the time of the BLM decision is without merit since the additional documents supplied by Davis do not show that sec. 27 was open to mineral entry at any time since the railroad grant issued. Instead, the record as supplemented supports the conclusion that the mining claim at issue was null and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Franklin D. Amess  
Administrative Judge

I concur:

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James L. Bymes  
Chief Administrative Judge